(Testimony of A. D. Snaider.)

Q. Given to the Government?

Mr. Pratt: What is it you are asking for?

Mr. Faulkner: The inspection certificate.

Mr. Pratt: For the John Muir?

Mr. Faulkner: For the John Muir. Have you got it? While they are looking——

Mr. Pratt: The Government is producing at the request of Mr. Faulkner an unsigned copy of an egg grading certificate relating to the steamship John Muir under Purchase Order 4,008.

Mr. Pratt: Q. Where does the number appear on these purchase orders?

A. Right there (indicating), Purchase Order No. 4,008. [1448]

Mr. Pratt: 4,008.

Mr. Faulkner: Q. As part of your record, Mr. Snaider, did you have some document similar to that?

A. We would normally receive a copy of a similar document, yes sir.

Q. And you would receive that from the Department of Agriculture? A. Yes sir.

Q. And you would pay them for that certificate?

A. Yes, we did.

Q. In other words, that is not a document that would come to you in the normal course from Nye and Nissen?

A. No, they were mailed in by the Government.

Q. The Department of Agriculture?

A. Yes sir.

Mr. Faulkner: May this be marked?

(Testimony of A. D. Snaider.)

The Court: It may be admitted and marked for the purpose of identification.

(The document was thereupon marked Defendants' Exhibit AA for Identification.)

Mr. Faulkner: Q. You had a file there, Mr. Snaider, and you were testifying concerning the commencement of the voyage of the John Muir.

The Court: Pardon me. Raise your voice.

Mr. Faulkner: Q. You have a record in your own handwriting on the commencement of the voyage of the John Muir? A. Yes sir.

Q. Will you get that so we can get those dates?

Mr. Pratt: We do not have grading certificate of the Francis W. Parker. [1449]

Mr. Faulkner: Q. I understand you to say that from your viewpoint this voyage commenced on the 22nd of April and that you loaded ship stores on April 24? A. That is correct, sir.

The Court: He said at Hunters Point.

Mr. Faulkner: Q. Was the vessel in the course of repair?

A. Well, at the time the voyage commenced the vessel was at Hunters Point, but the eggs were loaded at another dock. It states on there the place of loading.

Q. They were loaded at San Francisco or Oakland? A. I can tell by reference.

Q. I spilled some of those papers. I think they are all back there though.

A. It was at Berth B, Naval Supply Depot, in Oakland, where the stores were loaded.

(Testimony of A. D. Snaider.)

Mr. Snaider, you did not participate in any way in the loading of the ship's stores, did you?

A. No sir.

Q. In other words, you kept a record of what appeared to have occurred in the regular course of the loading of the vessel, is that right?

A. That is correct.

Q. The ship stores were loaded on the 24th of April. Now, do you know from your records or from any of these documents the date that the eggs were put aboard the John Muir?

A. I would say from this that they were loaded on April 24.

Q. But you do not know that yourself?

A. Not specifically, no sir.

Q. When did the vessel leave the dock?

A. She sailed—— [1450] she left the dock on the following day, April 25, at 12:30 p. m.

Q. Now, you do not know where the eggs were inspected of your own knowledge, do you?

A. Of our own knowledge, and evidence of the certificate, we know that they were to have been inspected before delivery.

Q. In connection with the transactions leading up to purchase of eggs from Nye and Nissen you issued a purchase order attention of Mr. Berman?

A. That is correct.

Q. Now, is that a confirmation purchase order?

A. No sir. In the case of the John Muir it was not. It was the original order. In other words, the

(Testimony of A. D. Snaider.)

order was placing it originally and it was not confirming anything.

Q. In other words, the mode of placing that particular order was the purchase order itself; it was not confirming a telephone conversation?

A. No, it was not.

Q. So in relation to the John Muir there was mailed to the firm of Nye and Nissen a purchase order for the commodities or the foodstuffs represented in the order? A. That is correct.

Q. And you have no recollection of any phone conversation in relation to that particular order, is that right?

A. Not in relation to the placing of the order, no sir.

Q. Not in relation to what?

A. To the placing of the order with Nye and Nissen.

Q. Then there is an order later for the Francis Parker. You identified this order, U. S. Exhibit 107.

A. Do you want this [1451] back?

Q. Yes. Thank you. What is that paper there, Purchase Order 107?

A. In the case of this order it is a confirmation of an order that was telephoned.

Q. And it related to the purchase of what commodities or what merchandise?

A. 480 pounds of butter, 40 pounds of American cheese, 25 pounds of Swiss cheese, and 25 crates of Medium Processed eggs.

(Testimony of A. D. Snaider.)

Q. And the order was to the firm of Nye and Nissen? A. Yes sir.

Q. What is the date of that order?

A. This order is dated March 20, 1944.

Q. Do you recall any conversation with Mr. Berman in relation to that order?

A. I don't specifically remember the conversation; no sir, but from the notation on this order, I would say that it confirmed an order that was telephoned to Mr. Berman.

Q. When was that order to be filled?

A. It was on a "will advise" basis.

Q. And did you later advise?

A. Yes, we did.

Q. This order is on March 20, and in what month did you advise Nye and Nissen to fill the order?

A. Let's see. I see that was in May, 1944.

Q. In other words, I am not testing your memory. Maybe this will help you. This is an exhibit that you said you had seen. That purchase order was dated March 20 to be filled "will advise," [1452] am I right. A. Yes sir.

Q. The advices were sometime near the date of that invoice, May 9, am I correct in that?

A. I would say yes. I can check it from the record. Yes sir, that is correct.

Q. Now how many cases of eggs did you issue a purchase order for? A. 24.

Q. And how many cases of eggs did you receive according to the invoice? A. 45.

(Testimony of A. D. Snaider.)

Q. Do you remember any of the circumstances under which the order was increased from 24 to 45?

A. I can't specifically remember the circumstance in this, but from this I would say that we later decided that we required 45 instead of 24, so we probably advised them by telephone to increase it from 24 to 45.

Q. Mr. Snaider, that would be a common thing in the victualling or the supplying of a vessel to issue a purchase order for a certain quantity and then at or about the time that you were to get delivery to phone and say, "We do not want 24; we want 45," or something?

A. It happens sometimes, yes.

Q. Then the supplier does the best he can to fulfill your additional request, is that right?

A. That is correct.

Q. In ordinary cases? Now, eggs were not plentiful in 1944, were they? A. No sir.

Q. It was difficult to get them?

A. That is true.

Q. The allocation that your company had made in the original instance for the Francis Parker was for 24 cases, and the final [1453] order was for 45, am I correct in that?

A. That is correct, sir.

Q. Without remembering the details or the facts in relation to it, it would appear to you that some time before the merchandise was delivered that some person had phoned Nye and Nissen to increase the quantities?

(Testimony of A. D. Snaider.)

A. That is my recollection, yes sir.

Q. I call your attention to the butter. On that occasion you ordered 480 pounds of butter and you actually received 780 pounds. Isn't that correct?

A. That is correct.

Q. In your original order in March there were 40 pounds of American cheese and you were invoiced for 180 pounds? A. That is correct.

Q. And you also wanted 25 pounds of Swiss cheese, domestic, and you got 5 pieces of Monterey Jack amounting to, I think it is, 55 pounds, is that right? A. Yes sir.

Q. According to your record that merchandise was delivered to the John Muir, is that right?

A. No sir. This is the Francis W. Parker.

Q. Did you have an occasion to have any discussion with anyone in the firm of Nye and Nissen in relation to the delivery of that merchandise after its delivery?

A. Not to my recollection, no sir.

Q. Have you any recollection of ever having made any suggestion to the firm of Nye and Nissen that any of this merchandise [1453] was not up to the quality ordered? A. No sir.

Q. In connection with the John Muir, when you ordered the merchandise reflected in this purchase order that you just saw, Exhibit 64, did you ever have any occasion to discuss the quality or quantity of the merchandise received on that purchase order with anyone in the firm of Nye and Nissen?

A. No sir.

(Testimony of A. D. Snaider.)

Q. You can do this faster than I because this is a very poor copy of the purchase order. Will you tell me, Mr. Snaider, whether the quantities generally in your purchase order for the John Muir follow the quantities that appear in the invoice?

A. Yes sir, I would say they do.

Q. They follow pretty closely?

A. Generally speaking, yes sir.

Mr. Faulkner: I think that is all, your Honor, but will you indulge me one moment, please?

The Court: Is that all from this witness?

Mr. Pratt: That is all, Mr. Snaider.

Mr. Faulkner: That is all. Your Honor, rather than keep the witness in attendance on the court, I would ask that he not be excused, and if it is agreeable, if you would return upon a day's notice, would that be agreeable to you?

The Witness: So far as I am concerned, yes sir.

The Court: You may be excused.

Mr. Pratt: Call Mr. Mahoney. [1455]

JAMES G. MAHONEY,

called as a witness by the Government; sworn.

Direct Examination

Mr. Pratt: Q. What is your full name?

A. James G. Mahoney.

Q. Where is your home?

A. Burbank, California.

(Testimony of James G. Mahoney.)

Q. What is your occupation?

A. Electrician aboard the S. S. Eaglewing.

Q. What is the name of the steamer?

A. Eaglewing

Q. In May of 1944 what was your occupation?

A. I was saloon messman aboard the John Muir.

Q. Do you remember when the voyage commenced?

A. I believe it started on April 24th and I boarded it at Port Hueneme, I would say on the 2nd of May.

Q. 2nd of May. Your position on that steamer was that of mess man, you say? A. Yes.

Q. As messman, what were your duties?

A. Well, I brought the plates of food from the galley in to the crew men and served it there.

Q. You served the crew men? A. Yes.

Q. This John Muir was a cargo vessel, was it?

A. Yes, sir.

Q. Are you familiar with the condition of the chill box where food products were kept on that ship?

A. Yes, I was. I had to go into it about every day.

Q. Do you know where the eggs were kept on that boat? [1456]

A. Yes, they were lying against one of the bulkheads.

Q. In the chill box? A. In the chill box.

Q. Are you able to state the condition of that chill box during the early period of that voyage?

(Testimony of James G. Mahoney.)

Mr. Faulkner: We object to that as incompetent, irrelevant, and immaterial, and too remote, and not binding upon the defendants, and upon all the grounds that were argued to the court at the recess this morning before the jury came into the box.

Mr. Pratt: It is entirely preliminary, your Honor.

The Court: I will allow it as a preliminary question.

Mr. Faulkner: Exception.

The Court: Read the question.

(Question read by the reporter.)

The Witness: Yes, it was clean and in perfect condition.

Mr. Pratt: Q. Do you know how the temperature was maintained during that early period of the trip?

A. Between 24 degrees and 36 degrees.

Q. You say you went on that boat on the 2nd day of May? A. Yes, sir.

Q. At Port Hueneme? A. Port Hueneme.

Q. On that first day, I will ask you whether you had occasion to serve any eggs.

A. Yes, sir, I did, for breakfast.

Q. Did you have eggs, yourself?

A. I had some, but I couldn't [1457] eat them.

Q. What was the matter with the eggs?

Mr. Faulkner: Same objection as heretofore made. This gentleman boarded the vessel on the 2nd of May and the order was, I think, the 10th of April.

(Testimony of James G. Mahoney.)

Mr. Pratt: The 24th of April the eggs went aboard and none went on after.

Mr. Faulkner: Just a minute. We will get the record right.

Mr. Pratt: He has just been talking to Mr. Snaider about it.

Mr. Faulkner: That is why I remember it so clearly. The order was April 10, 1944. There is the order.

Mr. Pratt: Yes, the order was April 10, to be delivered on a "Will advise" date, and the evidence shows that these eggs were delivered on the boat on the 24th of April. That is just testified to by the last witness.

Mr. Faulkner: There is no question about that.

Mr. Pratt: I don't see why counsel forgets it.

Mr. Faulkner: I don't forget it at all. In other words, an order goes in for eggs on the 10th of April. At the time of delivery of those eggs under the regulations introduced by the Government any eggs inspected within 21 days of that are deliverable under the order.

The Court: Read the previous question, Mr. Reporter. [1458]

(Record read by the reporter.)

Mr. Faulkner: So we submit this evidence is far too remote to have any evidentiary weight. Excuse me, your Honor, for interrupting.

(The record was re-read.)

The Court: Just a minute. Was this the second day you were on, or the first day?

(Testimony of James G. Mahoney.)

A. It was the next morning. I bordered her about 7:30, your Honor.

Q. What was the date? A. May 3rd.

The Court: I will allow the question. Objection overruled.

Mr. Faulkner: Exception.

Mr. Pratt: Will you answer the question?

Mr. Faulkner: On the further ground no foundation is laid that the eggs he has described have any relation to Nye and Nissen, no evidence of that in this case.

Mr. Pratt: There is evidence in the record to the effect that the only eggs that were put on that boat were eggs from Nye and Nissen, in accordance with the purchase order, and they were delivered on the 24th of April. It is perfectly clear the witness, Mr. Snaider, testified that no other eggs went on during that interval.

Mr. Faulkner: Mr. Snaider testified as clearly as a person could that his testimony was based on papers that were in his office and he had nothing to do with the loading of the boat. He never saw a single article go aboard the boat. [1459] Now, Mr. Pratt says he has established that no eggs were on the vessel because a man brought some record out of his office.

The Court: On the state of the record I will rule the proper foundation has not been laid for this testimony. I will sustain an objection. There may or may not have been other eggs on that boat.

Mr. Pratt: Mr. Snaider, from his record made

(Testimony of James G. Mahoney.)

by himself, testified specifically that no other eggs came on that boat after this delivery of the 24th.

The Court: How could he testify; they may or may not have been on that boat.

Mr. Pratt: He was in charge of ordering eggs for that boat, and he testified that no other eggs were ordered after the delivery of the 24th.

The Court: You say ordered, but is there any evidence in this record that there may or may not have been other eggs on that boat?

Mr. Pratt: All orders were issued by this last witness.

The Court: I am afraid I don't make myself clear. Suppose there were 20 cases on the boat before this order came in? My ruling is limited to the foundation being laid.

Mr. Pratt: The testimony of Colonel Hand in connection with this very boat was that on the 26th of April he examined the eggs that were covered by the invoice and that no other eggs were on the boat, and the testimony of Mr. Snaider is [1460] that he was the man who ordered eggs and that no other eggs came on between the time that these eggs invoiced as of the 24th of April, no other eggs came on between that time and the time the ship left on this voyage for foreign ports.

Mr. Faulkner: Your Honor, Colonel Hand testified to the eggs that he examined; that is all he testified to.

Mr. Pratt: He testified those were the only eggs there.

(Testimony of James G. Mahoney.)

Mr. Faulkner: Well, if you take the literal translation of the record as you developed it, the vessel left for its voyage on the 25th and yet Colonel Hand is examining the eggs on the 26th.

Mr. Pratt: The record is not like that, at all.

Mr. Faulkner: Well, that is the way——

The Court: Well, I will ask you to check the record and we will omit that for the time being. You may make your offer later, so there is no question about the record.

Mr. Pratt: Hand examined them on the 24th. If the Court please, whatever testimony we have from this witness must be had today, because he is leaving on a boat; I think it is tomorrow, isn't it?

The Witness: Yes.

Mr. Pratt: We can check the record.

The Court: Well, we will take a recess and possibly you can check the record and you will be able to conclude with the witness. [1461]

Mr. Pratt: Yes.

The Court: I cannot recall the details of the testimony, but I don't know that this record is clear in this, that there may or may not have been other eggs on this boat. That is all I am trying to indicate. I don't kno . The jurors may be excused for a recess.

(Recess.)

Mr. Pratt: We will recall Mr. Snaider.

ABRAHAM DAVID SNAIDER,

recalled as a witness by the Government; previously sworn.

Mr. Pratt: We are recalling Mr. Snaider for a few questions your Honor.

The Court: Very well.

Direct Examination

Mr. Pratt: Q. Mr. Snaider referring to the voyage of the John Muir, do you have a record which you personally kept at the time, an original record of the procedure from which you could state what eggs were loaded aboard the Cape Muir from the time the boat went into drydock until and after the 24th of April? A. Yes, I do.

Q. When did this boat, the John Muir, arrive here in San Francisco?

A. It arrived on March 23rd.

Q. Where did the boat then go?

A. She arrived March 23rd, down in the Bay, and was at anchorage. [1462]

Q. At anchor?

A. Yes. She remained there until April 5th. On that date she moved into Bethlehem Drydock.

Q. What was the condition of that boat?

A. She had returned from a foreign voyage, and I think it was New Guinea, or some place that she got a near miss, and there were a number of shrapnel holes in her that had to be repaired. That was the purpose of her going into drydock.

Q. At the time the boat went into drydock, do

(Testimony of Abraham David Snaider.)

you know whether there were any stores on her, eggs, or anything, for example?

A. There would have been little or none.

Q. Now, after that date——

The Court: Just a moment. Complete your answer.

The Witness: I see on March 30, 1944, we had ordered and received three cases of eggs from Nye & Nissen.

Mr. Pratt: Q. Three?

A. Yes. That was before she went into drydock.

Q. You have produced the purchase order and invoice for those three cases of eggs, have you?

A. Yes.

Q. Those were delivered, that is the date of the invoice, March 31st? A. Yes, sir.

Q. When were the next eggs received on board that boat?

A. The next eggs were received on April 21st.

Q. April 21st. From what source?

A. Armour & Company.

Q. How many? A. Three cases.

Q. Received on the 21st of April?

A. Yes; on the 22nd of [1463] April.

Q. The 22nd of April.

A. Pardon me. Just a minute. Yes, I see they were received on the 21st because I see the delivery tag for that date.

Q. The 21st of April? A. Yes.

Q. Then on the 24th of April the 48 cases which are described in the invoice that you have already

(Testimony of Abraham David Snaider.)

identified, Exhibit No. 65, those 48 cases went on on the 24th? A. That is correct, the 24th.

Q. I assume that you are unable to say what the consumption of eggs would have been during the period from the 31st of March to the 24th of April?

A. Not specifically, other than the chances are the entire six cases of eggs, the three that were originally received from Nye & Nissen, plus the three we got from Armour, would have been, probably been all used up.

Mr. Pratt: That is all for Mr. Snaider at this time.

Cross Examination

Mr. Faulkner: Q. Mr. Snaider, the last answer you gave is not based on your knowledge of how fast they used eggs on that vessel, is it?

A. Not specifically, technical knowledge, no.

Q. In other words, they had a skeleton crew on board the vessel until the voyage started?

A. No, they didn't have a skeleton crew. I see they signed, they engaged a crew on April 22nd; the crew would have almost been complete then.

Q. On April 22nd?

A. Yes. That is the day when they signed the crew.

Q. May I see the invoice of the Nye & Nissen order for three cases? A. Yes.

Q. That is of the Armour Company?

A. Yes.

Mr. Pratt: I have it here.

(Testimony of Abraham David Snaider.)

Mr. Faulkner: Q. What voyage was this of the John Muir, Mr. Snaider?

A. That would have been voyage 2 inward.

Mr. Pratt: Voyage 2 ended?

The Witness: Inward: i-n-w-a-r-d. I see here. I have another on March 23rd, we obtained two cases also from Nye & Nissen.

Mr. Faulkner: Q. Where is the Armour order? You have that Armour order in several counterparts. Would you mind separating that so we can have one of them, please?

The Witness: They appear all to be copies of the same invoice. Do you wish a copy?

Mr. Faulkner: I wish one of the counterparts.

The Witness: Yes.

Mr. Faulkner: The last eggs that were ordered for the vessel were from Armour & Company, other than the large quantity?

A. That is correct.

Mr. Faulkner: We offer that in evidence as part of the cross examination, your Honor.

The Court: Admitted and marked. [1465]

(The document was marked Defendants' Exhibit AB in evidence.)

Mr. Faulkner: Q. Mr. Snaider, what were the residue of ship's stores after the completion of voyage 2? Voyage 3 was the voyage coming up for which you were buying, was it not?

A. Yes.

Q. What was the ship's stores that were left over from voyage 2 on that vessel?

(Testimony of Abraham David Snaider.)

A. My recollection was that there were no eggs, which is the usual thing.

Q. Have you a record of the quantities left over?

A. I don't have it with me. I may have it in the office. My recollection is, though, that there were no eggs, because as a usual thing these ships come in without eggs. That is one of the first things they want when they get in.

Mr. Faulkner: That is all. Well, one more question.

Q. Did you get an inspector of the Department of Agriculture certificate from Armour & Company in relation to the eggs that were ordered from them?

A. I don't have it with me, and I don't remember of any we may have.

Mr. Faulkner: That is all.

Mr. Pratt: That is all.

JAMES G. MAHONEY,

recalled.

Direct Examination (Resumed)

Mr. Pratt: Q. Mr. Mahoney, you have testified that you [1466] made an inventory with the steward of the eggs in the box, the chill box, on what date?

A. May 3rd.

Q. How many cases of eggs were there at the time? A. 45.

Q. 45. Do you know what the source of any

(Testimony of James G. Mahoney.)

eggs there was, where the eggs came from, how they were labeled?

A. They were from Nye & Nissen eggs.

Mr. Pratt: Now, if the Court please, I want to repeat my question of the witness in regard to the character of the eggs as he observed them.

Mr. Faulkner: Same objection, your Honor.

The Court: The objection will be overruled. You may proceed.

Mr. Faulkner: Exception.

Mr. Pratt: Q. On this first day when you observed eggs, you say you had eggs for breakfast; the first day you were there you had eggs for breakfast? A. Yes, sir.

Q. What was the condition of those eggs?

Mr. Faulkner: Same objection.

The Witness: They were rotten.

Mr. Pratt: What?

The Witness: The ones I had were rotten.

Mr. Pratt: Q. Did you open them?

A. No. I tasted them. They had a strong odor, I noticed, and they tasted worse.

Q. On that same day did you serve eggs to members of the crew? A. Yes. [1467]

Q. How many?

Mr. Faulkner: Same objection, your Honor.

The Court: Same ruling. Overruled.

The Witness: A. Oh, approximately—I had eighteen men to feed. I served them, about half of them, that would be about eight plates.

(Testimony of James G. Mahoney.)

Mr. Pratt: Q. What was the condition of those eggs, if you know?

A. Well, as I took one of the plates in to one fellow they had a strong odor.

Q. Did he eat them?

A. No. He made me take them back and get some more.

Q. You brought some more? A. Yes, sir.

Q. Were those all right?

A. Yes, they were.

Q. Were there any other such instances on that first day?

A. Yes; that happened twice out of the eight people I served on the first morning.

Q. Following the first day, what, if anything, did you observe in connection with these eggs, either served to yourself or to members of the crew?

A. I never ate any more the rest of the trip, myself. It was continual complaint about them. More than once I had to take them all back.

Mr. Faulkner: Any complaints would be hearsay in description as to quality; not binding on the defendants.

Mr. Pratt: I will withdraw that question and the answer, if the Court please. [1468]

The Court: The answer will go out. Let it be disregarded.

Mr. Pratt: Q. What did you observe as to eggs served to the crew the days immediately following this first day you speak of?

(Testimony of James G. Mahoney.)

A. They had blood spots in the yolk. That is the ones I usually was made to take back to get some clear ones.

Q. For how long a period did this go on?

A. Until the eggs were consumed, sir.

Q. Do you know what was done with these eggs, from your own knowledge?

A. The ones with blood spots?

Q. Yes.

A. They were thrown away in the garbage pail.

Q. Was anything else besides the matter of blood spots that you observed there in connection with the eggs?

A. When they were fried, the whites would run all over, they wouldn't stand up.

Q. Was there anything else you observed?

A. No, sir.

Q. Was there anything in regard to the odor of these eggs that you observed?

A. Yes, sir, they had a bad odor, strong.

Q. Did you have occasion to go into the cook's galley during this, the early part of this voyage?

A. Yes, I did.

Q. In the cook's galley did you see any of these eggs broken into vessels?

A. Yes, I did. They broke them into a separate dish before they would put them in the frying pan.

Q. Was that customary?

A. Yes, that was customary of all ships. [1469]

Q. To break them into separate dishes?

A. Yes, separate vessels.

(Testimony of James G. Mahoney.)

Q. Then there was nothing unusual about that procedure? A. No.

Q. Did you observe the condition of the eggs next day as they were broken into these separate vessels? A. Yes.

Mr. Faulkner: I ask that the time be fixed.

Mr. Pratt: Q. During the early days of this trip? A. Yes.

The Court: Fix the time as near as you can that you went in the galley.

A. The second or third day I was working.

Mr. Pratt: Q. What did you observe in regard to these eggs that you saw broken into vessels in the galley?

A. That one out of every three had to be thrown away, sir; sometimes two out of three.

Mr. Pratt: Cross examine.

Cross Examination

Mr. Faulkner: Q. Mr. Mahoney, you were interviewed, were you, by certain agents of the Government? A. Yes, I was.

Q. They asked you questions similar to those you answered here in court? A. Yes, sir.

Q. You gave them the answers?

A. Yes, sir.

Q. How long ago?

A. I came up a week ago Sunday; it was the following Monday.

Q. What?

A. Following Monday, a week ago Monday.

(Testimony of James G. Mahoney.)

Q. Was that the first time you ever discussed the question of the eggs on that ship with any Government officer?

A. The agents came aboard.

Q. What?

A. The agents came aboard while we were in Frisco.

Q. When? A. October 2nd, or third.

Q. What year? A. 1944.

Q. 1944?

A. 1944 or 1945; I can't remember which.

Q. What? A. Must have been 1944.

Q. What agents?

A. It was the—I believe Mr. Magee came aboard.

Q. Did you see him here earlier today?

A. No, I haven't seen him all day.

Q. Did you talk to him today? A. No, sir.

Q. You were the messman? A. Yes, sir.

Q. What are the duties of a messman?

A. A messman's duties, he comes from the galley, he brings the plates of food from the galley and serves them to the crew.

Q. What are the duties of a messman in reference to the maintenance of temperature in a chill box?

A. He has nothing to do with that. That is the deck engineer's job.

Q. How often did you go to the chill box?

A. Every day, sir.

Q. How many times a day?

A. As high as two or three.

(Testimony of James G. Mahoney.)

Q. What was in the chill box of the John Muir on this particular voyage?

A. Well, there was eggs, fresh vegetables.

Q. What? A. Eggs and fresh vegetables.

Q. What kind of fresh vegetables?

A. Celery, lettuce. There was some canned goods that had to be kept chilled. There was fruit juice and vegetable juice that we used for breakfast.

Q. Is celery the only fresh vegetable in the chill box?

A. No. There were—there was lettuce, I can remember that.

Q. Cabbage? A. No, sir.

Q. Carrots?

A. No. That was all kept in the vegetable bin out on deck.

Q. What?

A. That was all kept in the vegetable bin out on deck.

Q. That is kept out on deck?

The Court: The vegetable bin out on deck.

Mr. Faulkner: Q. How large was this box, the chill box? A. 8 by 10 or 10 by 12.

Q. What? A. About 10 by 12.

Q. Did they have coils on it?

A. Yes, sir, on the bulk head.

Q. You say that there was a temperature maintained? A. Yes.

Q. What was the humidity of the room?

(Testimony of James G. Mahoney.)

A. I wouldn't know.

Q. Where were the eggs taken when they were taken out of that chill box?

A. Went to the galley.

Q. When would they be taken in the galley in respect to their use?

A. Approximately a half hour before breakfast.

Q. What time would that be?

A. Oh, breakfast from 7:30 to 8:30; that would be about seven o'clock, sir.

Q. Your recollection of the temperature was around 34 to 36? A. Yes. [1472]

Q. You saw cases of eggs, did you, in the chill room? A. Yes, sir.

Q. Describe them, were they in a fiber box?

A. They were in a wooden box.

Q. Did they have labels on? A. Yes, sir.

Q. What kind of labels?

A. They were square.

Q. What did they say?

A. I wouldn't know just exactly what they said, sir. I never did get that close to them.

Q. You never got close enough to them to read, is that right?

A. That's right, sir. At that time there was nothing especially interesting about them except the fact we were using them. You would not go up and look at a label.

Q. It was the agent of the Government who told you they were Nye & Nissen eggs, wasn't it?

(Testimony of James G. Mahoney.)

A. No. I knew where the eggs came from from the steward's report.

Q. How would you know if you did not read the label?

A. We checked with the steward and he put it down on his report.

Q. His report?

A. Well, his own personal report.

Q. Did he make a report of the condition of eggs to anybody?

A. Not that I know of. He might have complained to the captain. I didn't know that.

Q. What is the report you refer to that you saw the steward make?

A. As we pull out for sea the following day, I think it was the 4th, it might have been the 5th. Anyhow, a day or two after I got her.

Q. The 3rd of May this vessel was still in port, wasn't it? [1473] A. I came aboard.

Q. You didn't go out on the ocean to get on, did you? A. No.

Q. So at the time the condition of the eggs was known to you and to everyone else aboard that ship the day you first tasted them, was it not?

A. They were on board there.

Q. You discovered the condition of them?

A. Yes.

Q. Was there any effort made to replace the eggs?

A. I don't know, sir. That is not my job.

Q. Pardon me?

(Testimony of James G. Mahoney.)

A. I don't know, that was not my job.

Q. That is up to the steward. Well, they weren't replaced, as far as you know?

A. They were not replaced.

Q. You described certain eggs that you served to the crew. How large a crew was it?

A. 72 men, altogether on the ship. I served about eighteen or nineteen men.

Q. You served eighteen or nineteen men?

A. Yes.

Q. Officers or crew men? A. Crew men.

Q. That was your job, to take care of those eighteen or nineteen men? A. Yes.

Q. On some occasions you served them with some eggs? A. Yes.

Q. When, with respect to the time the ship put out to sea, do you first remember any incident relating to eggs?

A. Well, as I told the court before, I had complaints on them. I was made to take them back and bring him some new ones.

The Court: He wants you to fix the time.

A. May 4th. [1474]

Mr. Faulkner: Q. What?

A. May 4th.

Q. How do you fix that date so clearly?

A. A couple of days after, when we went to sea, after I got on the ship: maybe it might have been the next day.

Q. Might it have been three days after?

A. No.

(Testimony of James G. Mahoney.)

Q. It was two days after? A. Yes.

Q. In other words, the day you left for sea, it was two days after that you got some complaint about eggs on the ship? A. Yes.

Q. Is that correct? A. Yes.

Q. Whatever the eggs were, the cook had cooked them, had he not?

Mr. Pratt: If the Court please, I think counsel misquoted what the witness said as to the time when the condition of the eggs was discovered.

The Court: Read the last two or three questions and answers, Mr. Reporter?

(The record was read by the reporter as follows):

"How do you fix that date so clearly?

A. A couple of days after, when we went to sea, after I got on the ship; maybe it might have been the next day.

Q. Might it have been three days after?

A. No.

Q. It was two days after? A. Yes.

Q. 'In other words, the day you left for sea, it was two days after that you got some complaint about eggs on the [1475] ship? A. Yes.

Q. Is that correct? A. Yes.

Q. Whatever the eggs were, the cook had cooked them, had he not?")

Mr. Faulkner: Q. That is correct, is it not?

A. Yes; he cooked them.

Q. You served them? A. Yes.

(Testimony of James G. Mahoney.)

Q. The cook continued to cook those eggs until the supply was exhausted, did he?

A. I presume so, yes, sir.

Q. You continued to serve them?

A. Yes, to those who would have them.

Q. Did you exhaust the supply?

A. I don't know, sir.

Q. Did you see the eggs being broken into these dishes on some occasions? A. Yes, I did.

Q. When was that occasion you actually saw them being broken?

A. I was standing there at the galley waiting for the order to be fried, and talking to the cook.

Q. How was the order being fried?

A. Any way they wanted.

Q. Were they being——

A. Sunny-side-up, over easy, any way you want.

Q. Excuse me?

A. It was sunny-side-up, or you could have them any way you liked on that ship.

Q. So on this occasion the cook was frying those eggs and scrambling them, was he?

A. No. He was cooking them sunny-side-up.

Q. He was cooking them sunny-side-up?

A. This time.

Q. How many days during the voyage was the cook still cooking [1476] eggs sunny-side-up for the crew?

A. I don't have any idea. I guess they did it all through the trip, as far as I know.

(Testimony of James G. Mahoney.)

Q. So all through the trip the crew members were getting eggs sunny-side-up? A. Yes.

Q. How did the cook fry those eggs, in what kind of grease?

A. Regular lard, I suppose it was.

Q. What?

A. Regular lard, I suppose it was.

Q. Do you know? A. No.

Q. Do you know whether the lard was rancid?

A. No; I don't.

Q. Or use old butter to fry them? A. No.

Q. Did you ever see him use oil to fry them?

A. No.

Q. The only thing you saw him use was lard?

A. Yes, sir.

Q. The only way you remember seeing him cook the eggs was sunny-side-up?

A. No; he scrambled them, turned them over, did it each way.

Q. The occasions you saw eggs broken, how many eggs did you see broken on the first occasion?

A. Approximately——

The Court: Is this in the galley?

Mr. Faulkner: Q. On the first occasion you observed the cook opening eggs.

A. Opening them. I think he opened about two dozen the first morning.

Q. How many of the two dozen eggs on this first morning you watched him open them had blood spots in them? A. Half a dozen of them.

Q. What did he do with those eggs?

(Testimony of James G. Mahoney.)

A. Threw them away when I brought them back. He fried them first. [1477]

Q. In other words, whatever the eggs were, he brought them and they had blood spots in them and he put them on the pan and fried them?

A. Yes.

Q. You took them in and served the men?

A. Yes.

Q. Is that right? A. Yes, sir.

Q. How many were there, six?

A. I suppose about six.

Q. When the cook took the eggs out of the case what was their appearance?

A. I don't know. The galley boy brought them up.

Q. You saw him break them?

A. They were sitting in a pan alongside of him.

Q. But you saw the cook as he was breaking them? A. Yes.

Q. What was the appearance of the eggs that you saw him break? A. Just an ordinary egg.

Q. They looked like an ordinary egg to you?

A. Yes, sir.

Q. Were they musty? A. No.

Q. Moldy? A. No, sir.

Q. Any fringes on them? A. No, sir.

Q. Any discoloration?

A. I didn't check that close. I couldn't see discoloration that far back, ten or fifteen feet away.

Q. But you were close enough to see blood spots in another dish?

(Testimony of James G. Mahoney.)

A. That is when he brought them to me and put them in the pan I saw them.

Q. Did you ever observe the eggs before they were broken in the dish, at all?

A. No, I never took a close look at them. [1478] I didn't have that much to do with them.

Q. Did you have a close look at the case?

A. No, not a close look at it.

Q. Then how do you know where they came from, of your own knowledge?

A. Those were the only eggs we had on board, were the ones in the chill box.

The Court: How do you know that?

A. That is the only place they keep eggs on a ship, is in the chill box.

Mr. Faulkner: Q. When you say these eggs came from Nye & Nissen, you are basing that on what somebody told you, that that was the place they ordered the eggs, isn't it?

A. I saw it written down on the steward's sheet when he was filling out and checking the stuff. He had to go around and get it.

Q. Did you observe any cases of eggs that you testified about where you saw a mark that that case of eggs came from Nye & Nissen?

A. No, I couldn't testify to that.

Q. You couldn't testify to that?

A. No, sir.

Q. Where did the celery come from on that boat? A. I don't know.

(Testimony of James G. Mahoney.)

Q. Where did the potatoes come from on that voyage? A. I don't know.

Q. Where did the onions come from on that voyage? A. I don't know that, either.

Q. Do you know where any article of foodstuff came from for that voyage, except the eggs?

A. Except the eggs, that is the [1479] only one I know.

Q. That is because someone called it to your attention, isn't it?

A. That is because the steward wrote it down on his pad when he was checking.

Q. Did he write down on his pad every article that he received? A. No.

Q. What is the steward's name?

A. Campbell.

Q. How long did your voyage last?

A. Five months and one day.

Q. Five months and one day?

A. Five months and one day.

Q. When was the next time you took on eggs for that voyage after San Francisco?

A. I haven't any idea. I got off at San Francisco when we got back.

Q. What is that?

A. I got off in San Francisco, when I got back.

Q. Where did you go in the five months?

A. We were over to Moribe Bay and New Guinea.

Q. In that five months period you were on the boat? A. Yes.

(Testimony of James G. Mahoney.)

Q. At any time did the voyage stop and get other eggs? A. Not that I know of.

Q. Then the ship's stores for the 72 men consisted of 45 cases of eggs to last five months?

A. Yes.

Mr. Faulkner: That is all.

Mr. Pratt: That is all.

ANDREW EDWARD KAMMERLE,

called as a witness by the Government; sworn.

The Clerk: Will you state your name?

A. Andrew Edward Kammerle.

Direct Examination

Mr. Houck: Q. Mr. Kammerle, where were you employed in May of 1944?

A. I was employed by the Alaska Packers on the Francis W. Parker.

Q. What was your position on that ship?

A. I was chief steward.

Q. As such, what were your duties?

A. My duties were to requisition all supplies, check the supplies as they were brought down to the ship, and see that they were loaded aboard, and, of course, I take care of the feeding of the crew.

Q. I will show you Government's Exhibit No. 104 in evidence and call your attention to a pencil signature in the lower right-hand corner. Do you know whose handwriting that is?

(Testimony of Andrew Edward Kammerle.)

A. That is my handwriting.

Q. That is your signature? A. Yes, sir.

Q. Do you recall the circumstances of placing your signature on that document?

A. Yes. It was on the delivery of 45 cases of eggs down to the dock.

Q. Do your know when that delivery took place?

A. It is on this date.

Q. What is that date? A. May 9. [1481]

Q. May 9, ninteen what? A. '44.

Q. How was that delivery made?

A. Well, I was checking supplies——.

Mr. Faulkner: Your Honor, the witness is not permitted to testify from a document that is not in his own handwriting or prepared by him. May I have the record, please, to show your Honor? This is not the witness' memorandum.

Mr. Pratt: The witness put his own signature on this paper which he made contemporaneously——

Mr. Faulkner: Contemporaneously with what?

Mr. Pratt: With the delivery of these cases on that boat.

Mr. Faulkner: That's right, but he is using a paper written by other people.

Mr. Pratt: It was in his hand at the time.

The Court: Will you gentlemen be kind enough to sit down, if you will, please?

Mr. Pratt: Yes.

The Court: Read the question.

(The question was read by the reporter.)

The Witness: Well, I was receiving supplies of

(Testimony of Andrew Edward Kammerle.)

various kinds there, and a truck driver came up to me and said he had a shipment of eggs for me from Nye & Nissen.

Mr. Houck: Q. What pier were you on?

A. I think it was pier 41; down at the Army dock, I won't say for sure.

Q. You say a truck driver came up with some eggs?

A. He came right up on the pier where I was checking in the shed, and said [1482] he had a truckload of eggs.

Mr. Faulkner: The conversation with the truck driver is hearsay.

The Court: The conversation may go out. Proceed.

Mr. Houck: Q. What was done with those eggs?

A. Well, upon my instruction the truck driver unloaded the eggs on dollies right there inside the shed, just off where the ship was setting.

Q. Inside the shed. Would that be in a sheltered position?

A. Yes, it would be in a sheltered position.

Q. What type of sheltered position was it?

A. Well, it is a regular dock shed they have the whole length of the pier.

Q. There would be a roof over the eggs?

A. Yes.

Q. Do you recall what time of the day this delivery was made?

A. It was made 8:30 in the morning.

(Testimony of Andrew Edward Kammerle.)

Q. How did you obtain possession of that delivery ticket you identify your signature on?

A. Well, after the truck driver had taken all the eggs and put them on the dock inside the shed he presented the delivery slip to me for my signature, which I kept and turned into our office.

Q. Did you give him back a copy of that same document?

A. I gave him back a copy of the same; there were usually several copies in the invoice, or delivery slip, rather. I had to keep a copy for our office. I also had to give him a copy to return to his company. [1483]

Q. At the time you signed your signature on this document had you checked the quantity or these eggs in any way?

A. I just checked the quantity in cases.

Q. Did you open the cases or inspect the cases at all? A. No, I didn't.

Q. Did you weigh the cases, the eggs?

A. No, I didn't.

Q. Do you know if those eggs, or any of them, were subsequently inspected in your presence?

A. Yes, they were.

Q. When was that?

A. Within an hour after they were delivered they were inspected by FBI men.

Q. Where did that inspection take place?

A. It was taking place in my cabin on the ship.

Q. How did these eggs get on the ship?

A. Mr. Johnson came up to me and told me he

(Testimony of Andrew Edward Kammuerle.)

was from the FBI, and wanted to inspect the eggs. He chose several cases.

Q. What eggs did he choose?

A. The eggs that were delivered by this man from Nye & Nissen, the delivery man.

Q. Did you point them out to Mr. Johnson?

A. Yes, sir.

Q. What did Mr. Johnson and what did you do with the eggs from the time they were there on that pier?

A. He chose five cases of eggs and he and myself and the gentleman that was with him carried them aboard into my chill room.

Q. What was done with them there?

A. There we darkened the room and they set up a candling, I don't know what you would call it, a candling machine, or just a light simply where they [1484] looked through the eggs and called it candling.

Q. Were you there when they opened up the cases? A. Yes.

Q. You observed them take the eggs out and candle them? A. Yes.

Q. At the time you pointed these eggs out to Mr. Johnson, were there any other eggs on the pier?

A. Not to my knowledge.

Q. You didn't see any, is that correct?

A. That's right.

Q. What was done with the remaining 40 or 45 cases, whatever it was?

A. As soon as the inspection was over, under my

(Testimony of Andrew Edward Kammerle.)

supervision they were put down into our dairy box, as we call it, or reefer, by the longshoremen.

Q. In the dairy box on the ship?

A. Yes.

The Court: What do you mean by the "dairy box"?

A. Well, we have different boxes. We have the meat freeing box, then the dairy box. The dairy box is kept at a certain temperature to keep from getting too cold. If too cold it freezes the eggs, if it is not cold enough it doesn't keep the eggs in proper condition, whereas meat box is kept at freezing temperature. That is the reason we use the dairy box for eggs and cheese.

Mr. Houck:

Q. Did you observe Mr. Johnson, or the person with him, weigh any of these cases of eggs?

A. Yes.

Q. Where did he weigh them?

A. He weighed them on the dock.

Q. What type of scale did he have?

A. He had a platform scale. [1485]

Q. I now show you Government's Exhibit 102 in evidence, and call your attention to a signature on that document which purports to be yours. Is that in your handwriting? A. That is.

Q. What was the occasion for you to sign this?

A. Well, that is the invoice. It is sent from the company, and our company, or our office, they in turn send all these invoices down to me to check against delivery slips and then sign.

(Testimony of Andrew Edward Kammerle.)

Q. Prior to signing this, putting your name on this document, what sort of a check did you make?

A. I have to check the quantity and the amounts of the delivery slips against the invoice to see if they correspond before I sign.

Q. In other words, you check the delivery of this, which is Government's Exhibit 104, the one I showed you, against this invoice which you now signed, is that right? A. That's right.

Q. At the time, you made no further inspection of the quality or weight of the eggs?

A. Correct.

Mr. Houck: That is all.

Cross-Examination

Mr. Faulkner: Q. Mr. Kammerle, this incident on the pier was, according to your best recollection, about the 9th of May? A. Yes.

Q. Do you recall what merchandise you received from Nye & Nissen when that driver came down?

A. Yes, I got cheese, butter and eggs. [1486]

Q. How much cheese did you get, do you remember?

A. I couldn't say an exact amount. It was in the neighborhood of about, I would say it was a regular six months' supply in certain types of cheese, ran around 150 pounds.

Q. 100 pounds? A. 150.

Q. In other words, all of the cheese amounted to about 150 pounds, is that your best recollection?

A. The certain type or orders. I don't recall

(Testimony of Andrew Edward Kammerle.)

just exactly whether we got all of our ship's supply of cheese from that particular outfit, or not.

Q. What would you recall, or what would your recollection be of the quantity of cheese that you would take aboard for the voyage, altogether?

A. In the neighborhood of about 500 pounds.

Q. That is your best recollection of the voyage quantity of cheese?

A. For a six months' trip.

Q. Do you remember about how much cheese was delivered on this occasion by Nye & Nissen?

A. Well, I imagine around 250 or 275 pounds.

Q. That is your best recollection?

A. Well, I am just sort of figuring. I don't know exactly whether it came onto the ship or not, all of it.

Q. Do you remember how many cases of eggs were delivered? A. 45 cases. [1487]

Q. How do you remember that so clearly?

A. Because that was the standing order of the company for eggs.

Q. 45 cases?

A. More or less of a standing order that our company had for eggs and I had been on that particular ship for four trips.

Q. Each prior trip had 45 cases of eggs on it?

A. To start out with, yes.

Q. How much butter did this Nye and Nissen driver deliver?

A. That I wouldn't be able to say offhand, but I judge it is in the neighborhood of 1,400 pounds.

(Testimony of Andrew Edward Kammerle.)

Q. You checked the quantities as they came off the truck, is that right, is that your testimony?

A. Yes.

Q. When they came off the truck did you observe the cases in which they were, did you observe the cases, the boxes in which the eggs were?

A. Oh, I don't know just what extent you mean observing.

Q. Did you look at them?

A. I looked at the cases and counted them.

Q. You counted 45? A. Yes.

Q. Did they have labels?

A. Yes, they had labels on, but I wouldn't be able to tell you what kind they had.

Q. At the time the driver came down from Nye and Nissen and delivered this cheese, butter and eggs to you, that was just a routine delivery, was it not, up to that point?

A. I imagine so, although I don't know. [1488]

Q. But nothing unusual had happened up to that point of time, had it?

A. No, as far as I could see it is the same as any other time we got our ship stores.

Q. They were treated the same way, the stores?

A. Yes.

Q. When were they placed shipboard?

A. I would say within, not over, later than 10:30 that morning.

Q. When was the delivery by the driver?

A. Eight-thirty.

(Testimony of Andrew Edward Kammerle.)

Q. In between 8:30 and 10:30 Mr. Johnson came down, the gentleman here? A. Yes.

Q. Did Mr. Magee come down?

A. I don't quite recollect who the other gentleman was, but I remember Mr. Johnson because I had quite a conversation with him.

Q. Was the other man in uniform?

A. Sir?

Q. Was the other man in uniform?

A. I don't remember a man in uniform at all at the time.

Q. You do not? A. Inspector.

Q. Tell me as best you can if Mr. Johnson or any of these two men did or what they said, what they did in respect to the cases of eggs that were on the pier.

A. Well, after informing me that they were down there to inspect the eggs, the ship was where the eggs were, they went out there and picked out a certain number of cases, weighed them on the pier and they asked me where they could go to set up a candling machine to inspect them. I told them they could go to my cabin.

Q. They weighed them before they took them on the ship? [1489] A. Yes.

Q. They weighed them in your presence?

A. Yes.

Q. How much did the cases weigh?

A. That I don't know.

Q. Did you observe the weights yourself?

A. No, I did not. I was there not over ten feet

(Testimony of Andrew Edward Kammerle.)

away from it when they were weighing them but I was also watching and supervising other trucks that were being unloaded.

Q. There were five cases selected in that manner? A. Yes.

Q. They took those on board the ship, is that right?

A. Yes. I helped them carry them aboard.

Q. Assuming there were 45 cases delivered that would leave 40 cases on the pier. Apart from what they did with the 5 cases, tell me anything else these men did to the 40 cases?

A. Anything else they did to the 40?

Q. What did they do with the 40 cases that remained on the pier?

A. That I really couldn't say.

Q. Did they weigh them in your presence?

A. The other forty?

Q. Yes.

A. No, they didn't weigh them in my presence.

Q. Did they take any labels off them in your presence?

A. I wouldn't say they were taking them off. I saw them at the labels as I glanced over to watch them, but I wouldn't say I saw them take them away.

Q. You didn't see them actually take any off.

A. No.

Q. Did you see them open any of the boxes?

A. Those that they took aboard, yes. [1490]

Q. I mean the 40 that were on the pier?

(Testimony of Andrew Edward Kammerle.)

A. No.

Q. Then did the men leave, the men who came down, Mr. Johnson's party?

A. Well, to my knowledge they may have left and they may not have because I went on to the supervising and receiving and loading of those stores.

Q. Well on that day you say at ten-thirty you put the merchandise aboard ship?

A. That's right.

Q. These men had come that morning?

A. Yes.

Q. Where did you put the eggs?

A. Down in the dairy box.

Q. Did you then put the five cases that they had in the ice box, too?

A. I took them directly downstairs, down below.

Q. We will now go to the five cases. Did you see them open those boxes? A. Yes.

Q. Did you observe the eggs?

A. Yes, I watched them candling them.

Q. You actually observed the candling?

A. Yes.

Q. Did you watch them candle them?

A. Yes.

Q. Had you seen eggs candled before?

A. No, I can't say that I have. I knew what it was, but I hadn't seen it.

Q. So you were interested? A. Yes.

Q. What equipment did they have in this candling process?

(Testimony of Andrew Edward Kammerle.)

A. The first thing was to completely darken the room. Then they had a big light.

Mr. Faulkner: Have you got that gadget, Mr. Clerk?

The Court: Yes, sir, here it is. [1491]

Mr. Faulkner: Q. Something like this?

A. I don't think they had that particular type, but it was on the same order. It was a hole set in the box with a powerful light inside. That was the only light that penetrated up through the egg.

Q. Will you describe to me what you saw this man who was candling do?

A. Well, he opened up the case and turned out the light, of course, in there, and took eggs from each case and checked them. After he checked them he put them back in. He put each one through the process. After he checked them he put them back in a case and made his report on them. I left in the meantime after I saw them candling the eggs. I went out to do a little more checking on the trucks. Then I came back in to sign my report. That was the last I saw of him.

Q. At all events, Mr. Kammerle, when you watched him inspect the eggs, what he did was take eggs out of a box, hold them to a light, put them in a filler and he would check quite a few eggs?

A. Yes.

Q. Did he check an entire case of eggs?

A. Through an entire case?

Q. Yes.

A. I don't think so, not to my knowledge.

(Testimony of Andrew Edward Kammerle.)

Q. Did he do anything else other than holding the eggs to the light after he got them out of the box, did he do anything else [1492] other than holding them to the light and then place them——

A. He shook some of them and wiggled them around; I don't remember.

Q. He shook some of them? A. Yes.

Q. Would he do that often?

A. Well, I don't know. It was dark in there.

Q. What?

A. It was dark in there, I couldn't see as much. I imagine he was shaking all of them that he was candling.

Q. You imagine he was?

A. I wouldn't say for sure.

Q. Did he have a scale in that booth?

A. In the booth?

Q. Yes? A. You mean in my cabin.

Q. In that room?

A. He had a pocket scale, but I didn't see him weigh the cases of eggs with a pocket scale.

Q. Did you see him weighing eggs while he was inspecting them?

A. You mean inside the cabin; no, I didn't.

Q. While you were watching him he didn't weigh any eggs?

A. No; I was not in there all the time.

Q. While you were in there and saw what you described the man was shaking eggs and he was not while you were there weighing them, is that right?

A. That's right.

(Testimony of Andrew Edward Kammerle.)

Mr. Faulkner: That is all. Well, one further question. After the agents were all finished and had taken the five cases of eggs, the eggs were all returned to you and you proceeded on your voyage with the Francis Parker with the 45 cases of eggs?

A. Yes. [1493]

Q. Did you receive any direction from them either to use or not to use the eggs?

A. No, I did not.

Q. Did you notify the Government agent to come down to your pier? A. Notify whom?

Q. Did you ask these men to come down there?

A. No.

Q. They came down by some arrangement with which you weren't a part, is that right?

A. I took it for granted it was a regular procedure because—ships have to be inspected, meats and everything else were inspected by Government inspectors.

Q. In other words, it is a very common procedure for eggs and merchandise to be inspected right on the pier?

A. It has to be inspected before we can take it aboard, yes.

Q. Before you took it aboard, and you thought it was that type of inspection, is that right?

A. Yes.

Q. Did you see whether any of the labels of the boxes, the five cases, were taken off; did you see them take any labels off the five cases that were taken shipboard?

(Testimony of Andrew Edward Kammerle.)

A. No, I didn't see them take them off.

Mr. Faulkner: That is all.

Mr. Houck: No redirect examination.

The Court: The jurors may be excused until Tuesday morning at ten o'clock. Keep in mind the admonition of the Court and return at ten o'clock on Tuesday morning.

Mr. Faulkner: Your Honor, you are conscious of the fact [1494] that the calendar shows Tuesday is a legal holiday.

The Court: Well, we have no regard for legal holidays. I am governed by orders and unless there is some serious objection on the part of some juror, I am trying to get through with this case as fast as I can. Tuesday at 10:00 o'clock.

(The trial was then adjourned until Tuesday, February 12, 1946, at 10:00 a.m.)

Wednesday, February 20, 1946, 10:00 o'clock a.m.

The Clerk: United States v. Nye & Nissen.

Mr. Pratt: Ready.

Mr. Faulkner: Ready.

The Court: Call the roll

(The roll of the jury was called.)

The Clerk: All present, your Honor.

The Court: You may proceed. Call your next witness, please.

Mr. Pratt: The Government now offers in evidence Exhibit No. 17 for Identification, which is a general agency contract between the United States through the War Shipping Administration and the American President Lines, which provides for the management in behalf of the Government by American President Lines of whatever ships may be allocated to that company. This is offered in evidence together with the subsequent witnesses, all of whom today will relate to the same transaction, offered in connection not only with the first count of the indictment, but all of the substantive counts, these occurrences having taken place late in 1943.

Mr. Faulkner: We object to them as incompetent, irrelevant, and immaterial, hearsay as to the defendants, and no foundation laid in that there is no showing that any of the defendants in this case were connected with the transactions [1495] involved, and on the same grounds, your Honor, upon which objections were made to similar documents received.

The Court: The objection will be overruled. Let them be admitted and marked.

Mr. Faulkner: Exception.

(U. S. Exhibit No. 17 for Identification was thereupon received in evidence.)

JOHN J. PRESSER,

called as a witness on behalf of the Government; sworn.

The Clerk: Q. Will you state your name?

A. John J. Presser.

Direct Examination

Mr. Pratt: Q. Mr. Presser, I believe your residence is here in San Francisco, is it not?

A. No sir, San Mateo.

Q. San Mateo. A. San Mateo, yes, sir.

Q. Your employment is what?

A. Purchasing agent.

Q. With the American President Lines, is that right? A. Yes, sir.

Q. In that connection what do you have to do with the ordering of stores for the ships that are under the management of your company in behalf of the War Shipping Administration?

Mr. Faulkner: We object to that as hearsay as to the defendants, not binding upon them.

The Court: The objection may be overruled. You may [1496] answer.

Mr. Faulkner: Exception.

The Witness: Shall I answer.

The Court: You may answer.

A. Well, I have to consult a list of authorized dealers, authorized by the licensed dealers, those dealers that are licensed by the War Shipping Administration to supply War Shipping Administration ships, and then we place orders for supplies to those dealers.

(Testimony of John J. Presser.)

Q. Mr. Presser, in the year 1943, the latter part of that year, I will ask you whether you know if the steamship William S. Clark was under the management of your company under your general agency contract in behalf of the Government.

A. Well, I guess it was, because we had to do the buying for it, but the official papers——

Mr. Faulkner: We submit the matter whether a ship was under the management of the American President Lines, that that is evidence that should be produced by either a writing——

Mr. Pratt: I will withdraw the question and the answer.

Q. I direct your attention to a document here, and I ask you if you can identify it.

A. Yes, I can.

Q. That is a purchasing order from your company, is it? A. Correct.

Q. And issued by your authority as purchasing agent, is that right? A. That is correct.

Q. And did this document come from the regular records of your company, kept in the ordinary course of business? A. Yes, sir.

Mr. Pratt: This, if the Court please, is a purchase order which I now offer in evidence. It is dated October 13, 1943, directed to Nye & Nissen Company, for the steamer William S. Clark and owners, Voyage 1. "Deliver to Pier 42 5 cases of U. S. Medium eggs No. 1," and also some butter to the extent of 120 pounds.

The Court: It may be submitted and marked.

(Testimony of John J. Presser.)

Mr. Faulkner: Subject to our same objection, your Honor.

The Court: Very well.

Mr. Faulkner: Exception.

(The document was marked U. S. Exhibit 108 in evidence.)

Mr. Pratt: Q. Directing your attention now to this Exhibit 108, I will ask, first, in regard to this paper—I see it has your signature on the bottom, has it not?

A. That is correct, yes, sir.

Q. "J. J. Presser." I will ask whether you can tell from an examination of the document whether these were port stores or were they stores for the voyage?

A. Yes, sir, these were port stores. I can tell by the amount.

Q. Will you tell the jury what is meant by port stores?

A. Well, the port stores are bought for consumption while the ship is in port, as distinguished between a voyage order [1498] that is used during the trip, you see, overseas. By the amount I can tell this was just for a few days in port.

Q. I now direct your attention to another paper, which is also a purchase order, dated October 14, 1943, directed to Nye & Nissen, for the steamer William S. Clark and owners, Voyage 1, covering certain products. Is that also a paper that came from your files?

A. Yes, sir, this is the voyage order.

(Testimony of John J. Presser.)

Q. That is the voyage order that is part of the regular records of your company?

A. Yes, sir, this is.

Mr. Pratt: This is offered in evidence, if the Court please.

Mr. Faulkner: Same objection, your Honor, incompetent, irrelevant, and immaterial, and not admissible in evidence under the substantive counts of the indictment. You are not offering them on the substantive counts?

Mr. Pratt: I am offering this as to all the counts of the indictment, as I previously stated.

The Court: Let it be admitted and marked.

Mr. Faulkner: Exception.

(The document was marked U. S. Exhibit 109 in evidence.)

Mr. Faulkner: I thought the court had ruled in connection with this type of evidence that all of this was solely under the conspiracy count.

Mr. Pratt: No, if the Court please, we were talking [1499] previously of the transaction relating to the Hawaiian Shipper, which came around six months after the dates in the substantive counts. This transaction comes before the dates of the substantive counts. It antedates those counts by several months.

Now, referring to this exhibit——

Mr. Faulkner: May I see that? I think I indicated to your Honor clearly at a prior time our position with respect to these transactions, in which there is no mention of them in the indictment, and

(Testimony of John J. Presser.)

I do not want to review all of those points that I made, but I would like to indicate to the court that we take the position in connection with the admissibility of this evidence that as to the substantive counts it is irrelevant, incompetent and immaterial, hearsay as to the defendants, and no foundation laid in this record, after the length of time we have devoted to this trial, connecting any defendant to any of these transactions. There is no foundation in any of these transactions, at all.

The Court: In what respect has not a foundation been laid?

Mr. Faulkner: I thought your Honor had ruled that you had to establish a substantive count first before you would permit evidence of other transactions. That was the clear statement of the court, and I understood that was the manner in which the case was to be conducted. They have followed that for several weeks and now they are going to change. Maybe they thought we had forgotten.

Mr. Pratt: We have not changed in any respect. The court ruled that the other transactions relating to the Hawaiian Shipper were admissible only as to the first count, because they came after, about six months after the date of the various substantive counts.

Mr. Faulkner: That is right.

Mr. Pratt: There are matters that have already been admitted relating to other transactions which were admitted as to all of the counts.

Mr. Faulkner: I think the record will clearly

(Testimony of John J. Presser.)

show that the court very specifically told the counsel for the Government, when they claimed they could introduce evidence showing the intent of the parties with relation to the substantive counts, that they should first establish or make a pretense of establishing the substantive counts. That was the language of the court.

The Court: Well, it had to do with the order of proof. I indicated, possibly vaguely, it would be well to do that.

Mr. Pratt: At all events, if the Court please, it is all admissible as to the conspiracy count, and if it would please counsel I will be very glad to indicate at this time that we will ask for its admissibility only as to the first count. Subsequently we will ask the court to make it relative [1501] to all the counts.

The Court: Very well.

Mr. Pratt: I would rather do that than have any controversy over it at this time.

Mr. Faulkner: Your Honor, it is not a matter of controversy——

The Court: Very well. The testimony at this time is limited to the first count of the indictment.

Mr. Faulkner: Yes, subject to our objection and an exception to your Honor's ruling.

The Court: Very well.

Mr. Pratt: Q. Again referring to this exhibit, No. 109, Mr. Presser, I believe you stated that that is an order for stores for the voyage.

A. Correct.

(Testimony of John J. Presser.)

Q. And that is Voyage No. 1, is it not? And that indicates what as to the ship?

A. That is a new ship.

Q. A new ship, never out before, is that right?

A. That is correct.

Q. I now direct your attention to another purchase order which is dated December 2, 1943, directed to Nye & Nissen, for 40 cases of eggs and 20 boxes of butter, and I will ask you if you can identify that paper as having come from the original records of your company?

A. I guess it has, but at that time I was in New York. I left San Francisco in October, the latter part of October, 1943, and I did not return [1502] until the first week in January, 1944.

Q. That comes from the records of your corporation?

A. It is one of our regular purchase orders, yes, sir.

Q. One of the regular records of your corporation?

A. It is not signed by me—yes.

Q. This comes from the records of your corporation, does it not? A. Yes.

Mr. Pratt: This is also offered in evidence, relating to the same transactions.

Mr. Faulkner: Same objection, your Honor.

The Court: Same ruling. The objection is overruled.

Mr. Faulkner: Exception.

(Testimony of John J. Presser.)

(The document was marked U. S. Exhibit 110 in evidence.)

Mr. Faulkner: That is the objection made to the admissibility of the former documents.

Mr. Pratt: At this time I would like to read very briefly from one of these purchase orders. They are so similar that I would just like to call the attention of the jury to several of the characteristics. It is headed "Agency requisition form from American President Lines Purchasing Department, Pier office, dated October 14, 1943," and in a box at the corner "All invoices to be rendered as follows: The United States of America, War Shipping Administration, care of American President Lines, Limited, General Agent. This order number and prefix must appear on all invoices—" and then a number. [1503]

"To Nye & Nissen Company for Steamer William S. Clark and owners, Voyage 1. Please deliver to Pier 42, Steward's Department, this order, subject to War Shipping Administration terms and conditions as noted on reverse side. Net 30 days.

"1200 pounds of butter, 92 score or better;

"45 cases U. S. Medium No. 1 eggs."

Then at the bottom: "United States of America, War Shipping Administration, by American President Lines, Limited, General Agent, J. J. Presser, Purchasing Agent."

And there are various writings on the reverse, which it is not necessary to read. You may cross-examine. [1503-a]

(Testimony of John J. Presser.)

Cross Examination

Mr. Faulkner: Q. Mr. Presser, I understand that you have been the purchasing agent for the American President Lines for quite a period of time?

A. Well, no. At that time I was assistant. I have been purchasing agent since the first of February of last year.

Q. I mean you have been with the company?

A. Oh, yes.

Q. In the purchasing department over a long period of time?

A. No, only the last few years. I went to sea up until 1942, the latter part of 1942, when my ship was sunk, and then I came ashore.

Q. When you came ashore you became identified with the purchasing department?

A. That is correct.

Q. In what capacity had you served at sea?

A. Chief steward.

Q. Mr. Presser, in connection with the first exhibit here, this purchase order calls for 5 cases of U. S. Medium eggs, No. 1. Now, is that a purchase order that you caused to be issued?

A. Yes, sir.

Q. Do you know, Mr. Presser, whether that order was issued as a confirming order, that is, was the order phoned first, or do you know?

A. Well, that I couldn't say. You see, sometimes we phone the order first and sometimes, when

(Testimony of John J. Presser.)

we have lots of time, we mail the orders and then we get it that way.

Q. With respect to that order and the date of it, there was no requirement at that time for the eggs described in that order [1504] to be inspected, was there?

A. No, not on that small order—not on a small order like that.

Q. Do you know anything about the products that were supplied to your company under that order?

A. Do you mean did I inspect them or did I see them?

Q. Yes.

A. No, because we have a force of inspectors on the dock, and they come not under my jurisdiction. They come under the jurisdiction of the finance department, and they are the checkers and inspectors.

Q. Did you ever receive any complaint of any kind in respect to that merchandise?

A. In this here, personally I did not, no. As I said, I went to New York right after this.

Q. What date is that?

A. I think I went to Los Angeles first. I believe on the 20th or thereabouts.

Q. The 20th of what month was that?

A. Of October.

Q. In 1943? A. 1943, yes, sir.

Q. Now, in the files of your department, when you brought this paper out, did your file contain

(Testimony of John E. Presser.)

record of any objection of any kind to the merchandise that is covered by this purchase order?

A. No, I didn't see none.

Q. How long have you been dealing with the firm of Nye & Nissen?

A. Well, since I have been there, since I have taken over—I have been dealing with them since I took over until their license was revoked, and this was, I think, the beginning of last year, somewhere around April or May. [1505]

Q. That was after this case was——

A. Before I came there, they had been dealing with them a long time, I suppose.

Q. Over a long period of time?

A. Over a long period, yes.

Q. Were your dealings satisfactory?

A. Well, as far as I know they were.

Q. Mr. Presser, I call your attention to this Exhibit 109. I think it is dated October 14. Is this purchase order one that was issued by you?

A. Yes, it has my name. That was issued by me.

Q. Do you know whether that is a confirmation of a verbal order?

A. No. There is a notation on here. It says it was phoned in. This was phoned. This order was phoned. This is a confirmation.

Q. That called for 1200 pounds of butter and 45 cases of eggs. Do you know whether the file out of which you took this purchase order contained any record or memorandum indicating any criticism of this merchandise?

(Testimony of John J. Presser.)

A. No. I do not. This ship went to Los Angeles after it was stored, I believe. No, that was after the first order. Anyhow, as I said, I went to New York and I don't know——

Q. Yes, but you examined the file to bring these papers out of it.

A. Yes. Well, it is not necessary that I have anything in my file about this. There was nothing in my file about it.

Q. I show you this December 2, 1943, document,

Mr. Pratt: Mr. Faulkner, may I interrupt? It will appear that the date "12/2/43" should have been "11/2." It is a clerical error.

Mr. Faulkner: Well, you have not shown that.

Mr. Pratt: I said it will appear. I just wanted to tell you that, so you would not be under any misapprehension.

Mr. Faulkner: Q. At all events, this paper was not signed by you?

A. No. At that time I was away in November and this is not my name at all. It was my predecessor.

Q. From examining it, it is apparent to you that is a confirmation of an oral order?

A. Yes, it has written on there; "Confirmation," typewritten on there.

Mr. Faulkner: Will your Honor indulge me a moment, please? [1507]

Mr. Faulkner: That is all, Mr. Presser.

(Testimony of John J. Presser.)

Redirect Examination

Mr. Pratt: Q. Mr. Presser, you spoke of the fact——

Mr. Faulkner: One minute, Mr. Pratt.

Q. Mr. Presser, you made mention in your examination that you dealt with the firm of Nye & Nissen until their license had been revoked. Their license hasn't been revoked——

A. Well, that was mentioned—Mr. Donald of the War Shipping Administration forbade us to deal with Nye & Nissen.

Q. In other words, a governmental agency told you not to deal with them? A. Yes.

Q. After this indictment? A. Yes.

Q. But the license that was issued to them was never revoked?

A. That I don't know. We were just forbade to deal with them.

Q. That was after this indictment had been returned?

A. I guess so. It was, I think, in April or May.

Q. Of last year?

A. Of last year.

Mr. Pratt: Q. You spoke of one of these purchase orders indicating that there had been a telephone order. Was that one of those that you had to do with?

Mr. Faulkner: Yes, it is written there.

The Witness: The one with the orange copy. It is written on——

Mr. Faulkner: It is written on there.

(Testimony of John J. Presser.)

Mr. Pratt: Yes, "Phone Ruby". Is that your handwriting? [1508]

A. No. That is the man who makes the—typewrites the order.

Q. Who had the telephone conversation?

A. This fellow, a man named Schultz, he was my clerk.

Q. You didn't have the call yourself?

A. No.

Q. Have you ever talked to members of the firm of Nye & Nissen in connection with orders for produce?

A. Yes. Sometimes I will call in when we have a lot of orders.

Q. The statement here "Phone Ruby", that is all the handwriting of your assistant?

A. That is right.

Q. Do you know who is mean by Ruby?

A. Yes, that is Ruby——

Mr. Faulkner: Well, that would call for his opinion and conclusion.

Mr. Pratt: I am asking if he knows.

Mr. Faulkner: What another person meant by the word Ruby. He can't testify to that.

Mr. Pratt: I will withdraw it.

Mr. Faulkner: That's fine. I think we will get along——

Mr. Pratt: Who do you think it refers to?

Mr. Faulkner: I think that that is misconduct, your Honor, because if I hadn't observed that, that paper would not be admitted in evidence if it bears

(Testimony of John J. Presser.)

the handwriting of anyone other than this witness. For Counsel for the Government to indicate that in the presence of the Jury, that it is a transaction with Mr. Goddard—if so, it will be developed either by us or the plaintiff. I think the Court should instruct the [1509] Jury to disregard the statement by Mr. Pratt.

The Court: It may go out and the Jury will disregard it.

Mr. Pratt: That is all.

ANDRE P. LAUMOND.

called on behalf of the Government; sworn.

The Clerk: Will you state your name to the Court and Jury?

A. Andre P. Laumond.

Direct Examination

Mr. Pratt: Q. You spell your name how?

A. L-a-u-m-o-n-d.

Q. You reside here in San Francisco, do you not?

A. Daly City; just outside the city limits.

Q. Outside the city. Your occupation is what?

A. Assistant chief accountant for the American President Lines.

Q. Assistant chief accountant for the American President Lines. In that capacity you have access and familiarity with the records and files of the

(Testimony of Andre P. Laumond.)

American President Lines kept in the regular and ordinary course of business?

A. That is true.

Q. I direct your attention to an invoice on the heading of Nye & Nissen, Inc., dated October 14, 1943 addressed to the United States of America, War Shipping Administration, care of American President Lines, General Agent, City, covering two boxes of butter and five cases of eggs, $142.00; can you [1510] identify this invoice as part of the regular records of your company?

A. Yes, it is.

Mr. Pratt: I offer this in evidence, if the Court please. This relates to the merchandise which is represented by the purchase order Exhibit No. 108.

Mr. Faulkner: Same general objection that we made to all these invoices, your Honor.

The Court: Objection overruled. Let it be submitted and marked.

(The document was thereupon received in evidence and marked U. S. Exhibit 111.)

Mr. Pratt: Q. I now direct your attention to another invoice dated October 18, 1943, on the heading of Nye & Nissen, Inc., also addressed to the United States War Shipping Administration, for 45 cases of eggs and 20 boxes of butter, and ask you if that is part of the regular records of your corporation? A. It is.

Mr. Pratt: This is offered in evidence and it relates to purchase order Exhibit No. 109.

Mr. Faulkner: All on Count 1?

(Testimony of André P. Laumond.)

Mr. Pratt: On Count 1.

The Court: Admitted and marked.

Mr. Faulkner: Same objection. Exception.

(The document was thereupon received in evidence and marked U. S. Exhibit 112.)

Mr. Pratt: Q. I direct your attention to another invoice on the heading of Nye & Nissen, addressed to United States of America, War Shipping Administration, dated November 3, 1943, 40 cases of eggs and 20 boxes of butter, and ask if this was part of the regular records of your company?

A. It is.

Mr. Pratt: This is offered in evidence, if the Court please. It relates to merchandise ordered under the purchase order Exhibit No. 110.

Mr. Faulkner: Same Objection, your Honor.

The Court: Objection overruled. It may be admitted and marked.

Mr. Faulkner: Exception.

(The document was thereupon received in evidence as U. S. Exhibit 13.)

Mr. Pratt: Q. I now direct your attention to some cancelled checks, the first of which is——

Mr. Faulkner: Mr. Pratt, we will stipulate that those checks cover those invoices.

Mr. Pratt: I beg your pardon?

Mr. Faulkner: If you have examined those we will stipulate the checks cover the invoices subject to our objection as to the admissibility of that evidence.

Mr. Pratt: These three checks do cover the pay-

(Testimony of Andre P. Laumoind.)

ment of these three invoices there. I would like to identify them separately. [1512]

Mr. Faulkner: Well, all right.

Mr. Pratt: The first of them——

Mr. Faulkner: I will withdraw the stipulation.

Mr. Pratt: Q. The first is a cancelled check drawn by the American President Lines, General Agent, Special Account, to Nye & Nissen in the amount of $142.80, showing upon its cancellation matter that it was paid and it is endorsed, "Pay to the order of Bank of America Nye & Nissen."; that comes from the records of your corporation, does it? A. It does.

Q. Out of what funds was that paid?

A. War Shipping Administration funds.

Q. War Shipping Administration funds. Did that pay this invoice, Exhibit No. 111?

A. That's right.

Mr. Pratt: I offer this check in evidence, if the Court please.

The Court: Admitted and marked.

Mr. Faulkner: Same objection, your Honor When I say "same objection," we object on the grounds indicated at the beginning of this trial, that there is no connection with any defendant with these transactions, no foundation laid in this record connecting the individual defendants with any of these transactions.

The Court: Objection will be overruled. Admitted and marked.

Mr. Faulkner: Exception. [1513]

(Testimony of Andre P. Raymond.)

(The document was thereupon received in evidence and marked U. S. Exhibit 114).

Mr. Pratt: Q. I now direct your attention to another cancelled check of American President Lines drawn on the special account to Nye & Nissen, dated November 27, 1943, in the sum of $8208.46. That is part of the records of your corporation, is it not? A. It is.

Q. I will ask you if you can tell whether that check paid this invoice, Exhibit 112.

The Court: You will have to raise your voice so the Jury and the reporter can hear what you have to say.

The Witness: I cannot identify it without referring to the voucher.

Mr. Pratt: Q. Without the voucher. I now show you—I hand you these vouchers which you have produced and ask if by referring to them you can tell whether that check paid the invoice that you hold in your hand which has been referred to——

A. This check paid the voucher which covered the invoice referred to.

Mr. Pratt: This check is offered in evidence, if the Court please.

Mr. Faulkner: The same objection, your Honor.

The Court: Overruled. It may be admitted and marked.

Mr. Faulkner: Exception.

(The document was thereupon received in evidence as U. S. [1514] Exhibit 115.)

(Testimony of Andre P. Lauricad.)

Mr. Pratt: Q. That check is paid out of Government funds, was it not? A. True; right.

Q. Referring to Exhibit 115, I now direct your attention to another check, cancelled check dated January 5, 1944, in the sum of $3,991.92, payable to Nye & Nissen, showing the check was paid, and I will ask whether that check was given in payment of this invoice Exhibit 113, together with other bills?

A. This check covered the voucher which included this voucher.

Mr. Pratt: This check is offered in evidence dated January 5, 1944, in the sum of $3,991.92.

The Court: Admitted and marked.

(The document was thereupon received in evidence and marked U. S. Exhibit 116.)

Mr. Faulkner: Same objection, your Honor.

The Court: Same ruling.

Mr. Pratt: Q. I now direct your attention to another paper, a credit memorandum of Nye and Nissen to American President Lines, dated November 11, 1943, steamship William S. Clark, Long Beach, and I will ask you if that comes from the original records of your company?

A. It does.

Q. Do you know what that relates to?

A. A credit against an invoice which was originally paid and on which the merchandise was returned.

Q. Which invoice is that, can you tell by exami-

(Testimony of André P. Laumond.)

ing them? [1515] Does it refer to this invoice, Exhibit 112?

A. It does not refer to it. There would be no way of associating it with this. It refers to a purchase that was made prior to the credit, what we call a ship sale. The credit memorandum does not refer to that particular invoice.

Q. Do you know what it does refer to? Do you know what that credit memorandum indicates?

A. It indicates that the William S. Clark when she called at Long Beach discharged 26 cases of eggs and 18 boxes of butter upon which Nye & Nissen returned a credit. As to the physical—the reason for that is not within my jurisdiction.

Q. Does the paper indicate when those eggs and butter were returned from the William S. Clark at Long Beach, removed from the ship?

A. They were removed on November 11.

Q. The date of the credit memorandum is the 11th? A. Yes.

Q. Of November. Does that indicate that they were actually removed on that date?

A. Not necessarily. I wouldn't make that statement.

Q. They were removed prior to that date?

A. They would have to be——

Q. On that date or prior, is that right?

A. That's right.

Mr. Pratt: This credit memorandum is offered in evidence. It is dated November 11, 1943, on the heading of Nye & Nissen, Inc., to the American

(Testimony of Andrie P. Laumond.)

President Lines, SS. Clark, Long Beach, in the amount of $1,105.04. [1516]

Mr. Faulkner: Objected to as incompetent, irrelevant, immaterial, and not within the issues of this case, your Honor; hearsay as to the defendants, and no foundation laid.

The Court: Overruled.

Mr. Faulkner: Exception.

(The document was thereupon received in evidence and marked U. S. Exhibit 117.)

Mr. Pratt: This check, No. 116, was that likewise paid out of Government funds?

A. It was.

Mr. Pratt: Cross-examine.

Cross Examination

Mr. Faulkner: Q. Mr. Laumond, when you testified that these checks were paid out of Government funds how do you know that, Mr. Laumond?

A. In my capacity as assistant chief accountant I have supervision over the books of the WSA books, as we call them, which originally started with a fund, a working fund, provided by the War Shipping Administration, from which all operating expenses are to be disbursed.

Q. In other words, does the Government deposit money into the account? A. That's right.

Q. Or does the American President Lines deposit the money in the account?

A. Well, the actual physical act of taking it to the bank is done by the American President Lines.

(Testimony of Archie P. Lammond.)

but the funds are provided by the War Shipping Administration. [1517]

Q. Well, you handle an account that shows an amount of money? A. Yes.

Q. You are assuming that the War Administration deposits the money, is that correct? Do the checks from the Government pass through your hands?

A. They don't pass through my hands; no.

Q. The account you have charge of merely shows a War Shipping Administration account?

A. Yes.

Q. And on the other side you have certain charges against that account? A. Yes.

Q. You don't know the source of the credit of your own knowledge, do you?

A. Yes, I do know from my own knowledge, although it doesn't pass through my hands, but in my capacity I naturally have contacts with the cashiers.

Q. You say the American President Lines makes up——

A. The American President Lines render a monthly statement of disbursements made out of funds and present it to the War Shipping Administration and they issue a check to reimburse the fund.

Q. In other words, each month the American President Lines send a bill for the expenditures——

A. It wouldn't be a bill.

Q. Well, a statement?

A. It would be a statement.

(Testimony of Andre P. Laumond.)

Q. That statement shows the expenditure in the preceding period prior to the statement?

A. Yes. [1518]

Q. Based upon that statement, certain moneys are sent to the American President Lines?

A. That's right.

Q. So the payment comes first, doesn't it, to firms such as Nye & Nissen and secondly, payment comes from the War Shipping Administration?

A. Not necessarily. The funds are there originally and the funds are reimbursed after it drops to a certain amount. It doesn't specify it reimburses certain funds, it says "Your fund is below——"

Mr. Faulkner: Well, I ask all the evidence go out by the witness as to how the money is paid, because it is not the best evidence. It is either a reimbursement or a direct payment. If it is a reimbursement there is one legal situation, and if it is a direct payment there is another. If the Government feels it is essential to produce evidence as to the payment of the bills we submit they should produce the best evidence. This witness' testimony on the point is neither relevant nor material because he doesn't know. We haven't got the contract. We haven't anything here except a man who says they rendered a statement and was reimbursed for the statement.

The Court: Objection overruled.

Mr. Faulkner: Exception.

The Court: The question and answer may stand.

Mr. Faulkner: Q. Now, Mr. Laumond, there is

(Testimony of Andrew P. Lasmond.)

a check here for $8,268, and you have stated that that check for $8,268.10 was in payment of merchandise delivered to the William S. Clark; [1519] is that correct? A. That's right.

Q. How many ships did the firm of Nye & Nissen deliver merchandise to in the month of November of 1943, according to that record?

A. According to the invoices listed here, three, six ships—rather, five ships; five individual ships on which deliveries in November should have been made.

Q. How many ships during the period covered by your Voucher No. 14,934 upon which you say this invoice was paid, how many ships was merchandise delivered to by Nye & Nissen; according to that record?

A. The actual count was more than—well, there was about eleven individual transactions, on the ships mentioned.

Mr. Faulkner: I offer as part of the cross-examination of this witness this record dated November 25, 1943.

The Court: Admitted and marked.

(The record was thereupon received in evidence and marked Defendants' Exhibit AC.)

Mr. Faulkner: Q. You say in your testimony that this invoice was paid by this check because there is a William S. Clark mentioned with the figure $1,350 opposite it?

A. Not only that, but there is also a voucher reference mentioned on the invoice.